UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF COLORADO

Bankruptcy Judge Marcia S. Krieger

In re:	
IVAN MARK GORODESS,) Bankruptcy Case No. 01-17854 MSK
SSN xxx-xx-3130) Chapter 7
Debtor.)

ORDER

THIS MATTER comes before the Court on the Trustee's Application for Authority to Employ Internet Auction Venue and to Authorize Sale by Auction of Property of Estate and to Pay Commission (Motion) and the Debtor's Response (Response). The Court received evidence and argument at an evidentiary hearing conducted on November 9, 2001, after which the parties submitted additional legal authority. Having considered the evidence presented and the arguments made by counsel, the Court finds and concludes as follows:

I. JURISDICTION

This Court has jurisdiction in this matter pursuant to 28 U.S.C. §§ 157 and 1334(a) and (e). This Motion involves determination of whether an asset is property of this bankruptcy estate which is a core matter.

II. FACTS

- 1. The Debtor, Ivan Mark Gorodess (Debtor), filed a voluntary petition under Chapter 7 of the Bankruptcy Code (Title 11 of the United States Code) on May 30, 2001. At the time of the filing, the Debtor was the holder of season tickets (located in Section 358, Row 11, Seats 1 & 2) for the 2001-2002 game season of the Colorado Avalanche, a professional ice hockey team. For these tickets and an accompanying parking pass, the Debtor promised, pre-petition, to pay \$2,090.00 by a down payment, followed by seven monthly installments of \$160.71.
- 2. Jeffrey L. Hill is the duly appointed and acting Trustee (Trustee) administering the bankruptcy estate. In the Motion, he seeks authority to sell the estate's interest in the Debtor's "season ticket rights" by internet auction.
- 3. The "Terms and Conditions regarding Colorado Avalanche Game Tickets" (Terms and Conditions) as printed on the reverse of the ticket invoice provide, in pertinent part that:
 - 1. Any Colorado Avalanche ticket purchased under this invoice is a revocable license which may be withdrawn and admission to any Colorado Avalanche game refused at any time, in the sole discretion of the Colorado Avalanche upon refunding the purchase price printed

on the face of the ticket less any discount the purchaser may have received.

2. Resale or attempted resale of any Colorado Avalanche ticket at a price higher than that printed thereon, including tax, is grounds for seizure or cancellation without refund or other compensation.

. . .

- 5. The Colorado Avalanche's acceptance of payment for season tickets from any individual or entity who is not the account holder for such season tickets does not grant rights to such tickets to such individual or entity.
- 6. Season ticket holders have no right to transfer the seat locations designated by their tickets to any person or entity, whether by a request to transfer the account into another name, or by an attempt to transfer the seat locations by sale, gift, transfer by will or trust, property settlement, transfer to creditors or any other means. Therefore, any attempt to sell or otherwise transfer season ticket privileges may result in the cancellation of all season ticket privileges. Any court order directing the distribution of season tickets to a person or entity not listed as the season ticket holder, whether in bankruptcy or otherwise, will result in the Colorado Avalanche's exercise of its right immediately to withdraw the license represented by the tickets, including any season ticket renewal privileges, upon refund by the Colorado Avalanche of all amounts paid for games that have not yet been played.

The Colorado Avalanche will, however, generally recognize two exceptions to the above prohibition. First, the Colorado Avalanche will allow an individual season ticket holder to request transfer of season ticket privileges to members of the season ticket holder's immediate family. Second, if the season ticket holder is a business, it may request a change in the name of the contact person for its account

. . ..

III. ISSUES PRESENTED

The Trustee argues that the Debtor's tickets and season ticket privileges are property of the bankruptcy estate pursuant to 11 U.S.C. § 541(a). As property of the bankruptcy estate, the Trustee contends that he is empowered to sell the tickets or season ticket privileges pursuant to 11 U.S.C. § 363(b)(1). The Debtor argues that the contractual restrictions on the sale of the tickets and season ticket privileges prevent them from being property of the estate, or if so, make their value so

inconsequential that the Trustee should not be allowed to offer them for sale. The Trustee argues that offering the tickets and season ticket privileges for sale is the best way to determine their value. No argument is made with regard to whether a sale should be conducted in an internet auction venue.

This frames two issues:

- 1. Are the Debtor's interests in Colorado Avalanche tickets and season ticket privileges property of the bankruptcy estate pursuant to 11 U.S.C. § 541(a)?
- 2. If so, should the Trustee be authorized to offer same by internet auction to determine the value of the interest and to sell same?

IV. ANALYSIS

The Bankruptcy Code provides that a bankruptcy estate is comprised of all legal or equitable interests of the debtor in property as of the filing of the commencement of the case. 11 U.S.C. § 541(a). The scope of property of the estate is intended to be broad, including real, personal and intangible property interests as well as contractual rights. *United States v. Whiting Pools, Inc.*, 462 U.S. 198 (1983). It is bankruptcy law that determines that "all legal or equitable interests" of a debtor "in property" become assets of the bankruptcy estate.

Essentially, a bankruptcy estate steps into the shoes of a debtor, becoming the owner and beneficiary of all of the debtor's rights and interests at the time of the debtor's bankruptcy filing. This is easily recognized when the debtor's interest is in real or personal property. Most debtors and third parties recognize that, unless property is abandoned by a trustee, until a Chapter 7 case is closed, only the trustee can convey the debtor's interest in real or tangible personal property. Intangible property or contractual rights also become property of the bankruptcy estate and can be exercised or assigned only by a trustee in a Chapter 7 case or by the debtor-in-possession acting as a trustee in a Chapter 11 case. For example, a debtor's contractual right to draw upon a bank account as property of its bankruptcy estate. *Southmark Corp. v. Grosz (In re Southmark Corp.*), 49 F. 3d 1111 (5th Cir. 1995); *Amdura Nat'l Distrib. Co. v. Amdura Corp.* (*In re Amdura Corp.*), 75 F. 3d 1447 (10th Cir. 1996). When an insurance policy covers a corporation's liability to third parties, both the policy and proceeds are property of the corporation's bankruptcy estate. *Homsy v. Floyd (In re Vitek, Inc.*), 51 F. 3d 530 (5th Cir. 1995). A bankruptcy estate also includes causes of action belonging to a debtor. *Sierra Switchboard Co. v. Westinghouse Elec. Corp.*, 789 F. 2d 705 (9th Cir. 1986).

The Debtor did not schedule the Colorado Avalanche as a creditor or the tickets or season ticket privileges as assets. The Colorado Avalanche has not filed a proof of claim. Presumably, the Debtor has been paying the installment payments for purchase of the tickets post-petition and using them to attend scheduled games. The Colorado Avalanche was not served by the Trustee with the subject Motion. Counsel for the Colorado Avalanche appeared at the hearing but filed no request to intervene in the matter. Counsel for the Colorado Avalanche has, however, assisted the Debtor in briefing the issues before the Court.

Although bankruptcy law determines whether a debtor's property becomes property of the estate, the scope and existence of a debtor's interest at the time of the bankruptcy filing is determined by non-bankruptcy law. *Butner v. United States*, 440 U.S. 48 (1979). If state law does not recognize a debtor's interest or rights, the estate acquires none. If the use or disposition of a debtor's interest is limited by non-bankruptcy law, so is the estate's interest. For example, when a debtor has possession of grain elevators on the date of the bankruptcy filing, the debtor's possessory right becomes property of the bankruptcy estate, but it is subject to the ownership rights of holders of documents of title under state law. *State of Mo. v. U. S. Bankruptcy Court for E.D. Arkansas*, 647 F. 2d 768 (8th Cir. 1981). Similarly, a prejudgment tort claim becomes property of the estate, but it cannot be sold or transferred by the trustee if the debtor would have been unable to assign or transfer it under state law. *Integrated Solutions, Inc. v. Service Support Specialties, Inc.*, 124 F. 3d 487 (3rd Cir. 1997).

Relying on the provisions of 11 U.S.C. § 541(a), the Trustee contends that the Debtor's interest in the Colorado Avalanche tickets for the current season and his seasonal renewal privileges as of the date of the bankruptcy filing are property of the bankruptcy estate. The Court agrees. The nature and extent of these rights, however, is determined by Colorado law. Although neither party has offered case authority directly on point, the Court finds guidance in two opinions applying Colorado law.

There is little doubt that the Debtor, and now the estate, holds no real property interest by virtue of the current tickets or seasonal renewal rights. The Terms and Conditions describe a Colorado Avalanche ticket as a revocable license. In *Booker v. Cherokee Water Dist.*, 651 P. 2d 452 (Colo. App. 1982), the Colorado Court of Appeals distinguished between a license to use real property and an interest in the property itself. The court reasoned that a license is a personal privilege to do some act or series of acts upon the land of another, not involving possession of an estate or interest therein. A bare license is a revocable contract right. It is unassignable by the licensee except as authorized by the licensor or as provided in the license. In contrast, a license coupled with an interest in the property is a real property right which can be assigned at the licensee's discretion. In *Booker*, the court observed that a licensee's ownership interest in a pipe located on the licensor's property created a license coupled with an interest which was assignable as a property interest. Because ticket rights and renewal privileges are not accompanied by any interest in the real property where the sporting event is held, they constitute bare, revocable licenses not subject to assignment absent consent of the licensor.

Although the issued tickets and renewal privileges constitute bare licenses, this does not mean that they are not treated as property under Colorado law. To the extent that such license rights can be assigned, they constitute personal or intangible property subject to execution. In *Miller v. Livingston (In re Livingston)*, 28 F. Supp. 2d 623 (D. Colo. 1998), Magistrate Judge Borchers of the United States District Court for the District of Colorado addressed the issue of whether Denver Broncos tickets and season ticket privileges constituted property subject to execution to satisfy a civil judgment.² In *Livingston*, the court held that issued but unused tickets to attend Denver Broncos

The legal character of issued Denver Broncos tickets is analogous to that of Colorado Avalanche tickets, but Denver Broncos seasonal renewal rights are more generous than those extended to Colorado Avalanche

games were revocable licenses that constituted personal property subject to execution. Furthermore, season ticket renewal rights constitute a right of first refusal in the event the Denver Broncos issue tickets in future years. Such renewal rights likewise are subject to execution. However, because ticket renewal rights are conditioned upon future issuance of tickets, no current value could be attributed to them.

By operation of bankruptcy law, the Debtor's tickets and renewal rights are property of the bankruptcy estate. The case authority offered by the Debtor does not compel a contrary conclusion. The Debtor relies upon two decisions, neither of which are not binding precedent. Furthermore, both are distinguishable. The first is *In re Liebman*, 208 B.R. 38 (Bankr. N.D. III. 1997), wherein the bankruptcy court considered the issue of whether a holder of season tickets to Chicago Bulls games has a property interest in the right to renew. The terms and conditions for renewal were substantially similar to those for renewal of Colorado Avalanche tickets. Therefore, the Debtor argues that the court's conclusion in *Liebman* that the trustee could not sell season renewal rights compels a determination that the Debtor's Colorado Avalanche ticket rights, both for current tickets and renewal rights, are not property of this bankruptcy estate.

The Debtor overstates and oversimplifies the import of *Liebman*. *Liebman* considered only ticket renewal rights, and is therefore not helpful with regard to tickets issued for the current season. Furthermore, the *Liebman* opinion collapses and confuses the determination of whether a debtor has an interest which becomes property of a bankruptcy estate (which is governed by bankruptcy law) with the determination of whether the interest is subject to sale (which is determined by nonbankruptcy law). Reasoning that the Chicago Bulls ticket renewal rights according state law created a revocable license to renew, the *Liebman* court concluded that the trustee had nothing to sell. This may be correct, but it is not determinative of whether the renewal rights became property of the estate. Whether an interest can be alienated does not determine whether it is property of a bankruptcy estate. It is not unusual that property of the estate cannot be liquidated due to conditions or restrictions on alienation. As noted above, certain tort claims which become property of the estate may not be sold by a trustee. *Integrated Solutions, supra*. The same is true with regard to exempt property. Sierra Switchboard, supra. When property of the estate has no value or cannot be liquidated, it can be abandoned upon a showing that it is burdensome or is of inconsequential value and benefit. 11 U.S.C. § 554. *Liebman* is more properly construed to stand for the proposition that where season sports ticket renewal privileges are licenses revocable by the issuer, the trustee may not sell them.

The second case the Debtor relies upon is *In re Harrell*, 73 F. 3d 218 (9th Cir. 1996), wherein a district court reversal of a bankruptcy decision permitting the sale of Phoenix Suns season ticket renewal privileges was upheld. The Ninth Circuit Court of Appeals held that because Arizona law did not consider a revocable license to renew Phoenix Suns season tickets a property right, a bankruptcy trustee could not sell such an interest. The Debtor's reliance upon this opinion is misplaced, as well. Like *Liebman*, the Ninth Circuit does not consider regular season tickets, only season ticket renewal rights. In addition, as in *Liebman*, the court confuses the determination of what

ticket holders. However, the distinction between the scope of the season renewal rights makes no difference in the applicability of the *Livingston* court's reasoning to this case.

is property of the estate with what a trustee can sell. The *Harrell* court apparently believed that § 541(a)(1) requires that the debtor have an interest in real property for such interest to become property of the estate. Because Arizona law does not recognize ticket renewal rights as creating an interest in real property, the court concluded that there was no interest that became property of the estate. This Court respectfully rejects such conclusion. As noted above, it is not necessary that the debtor hold an interest in real property for such interest to become an asset of the estate, only that the debtor hold an interest cognizable under non-bankruptcy law. Had the *Harrell* court concluded that the season ticket renewal rights were property of the bankruptcy estate, its holding likely would not have changed. Consistent with *Liebman*, *Harrell* can be read to hold that the season ticket renewal privileges which are subject to revocation cannot be sold by a bankruptcy trustee.

For the above reasons, the Court concludes that the Debtor's tickets for the current Colorado Avalanche season and his seasonal renewal privileges are property of the bankruptcy estate. However, the estate takes such interest subject to the same restrictions and conditions as would be applicable to the Debtor. Thus, the resolution of the second issue of whether the Trustee should be authorized to sell the tickets and seasonal renewal rights depends upon the contractual terms governing the license rights.

Terms for resale of tickets for the current season are governed by paragraphs 1 and 2 of the Terms and Conditions found on the reverse side of the season invoice. These paragraphs state that a ticket is a revocable license which "may be withdrawn and admission to any Colorado Avalanche game refused at any time, in the sole discretion of the Colorado Avalanche, **upon refunding the purchase price printed on the face of the ticket less any discount the purchaser may have received.**" Furthermore, "resale or attempted resale of any Colorado Avalanche ticket at a price higher than that printed thereon, including tax, is grounds for seizure or cancellation without refund or other conditions" (emphasis added). The effect of these provisions, read together, is to authorize a ticket holder to sell a ticket at its face value. If the Colorado Avalanche desires to revoke the license, it is obligated to pay the ticket holder the face value less any discount in purchase price. In short, if the Colorado Avalanche revokes the license it must refund the purchase price. Because the Trustee holds the same rights the Debtor had at the time of the bankruptcy filing, the Trustee can offer tickets for the current season for sale at the face amount, plus tax. If the Colorado Avalanche desires to revoke the license, it can pay the estate or the holder of the tickets the face amount of the tickets, less any discount the Debtor received.

Season ticket renewal privileges are governed by the provisions of paragraphs 5 and 6 of the Terms and Conditions. In summary, these paragraphs provide that: (1) payment for season tickets by someone other than an account holder does not entitle the person paying to receive season tickets; (2) season ticket holders have no right to transfer "seat locations," except to family members or in the case of an organization to change the name of a contact person; (3) any attempt to sell or transfer ticket privileges to the contrary **may result in cancellation of all season ticket privileges** (emphasis added); and (4) any court order directing the distribution of season tickets to a person or entity not listed as the season ticket holder, whether in bankruptcy or otherwise, **will result in withdrawal of the license represented by the tickets, including season ticket privileges, upon refund of all amounts paid for games that have not yet been played** (emphasis added). Reading these provisions together, the Debtor was restricted from selling seat locations. If he transferred his season

tickets, the Colorado Avalanche could refuse to issue tickets to the transferee. Furthermore, any court order directing sale of the tickets or renewal privileges triggers withdrawal of the license for both current tickets and season renewal rights. In such event, the Colorado Avalanche must refund the amount paid for tickets for games not yet played. These provisions dovetail with the general right of the Colorado Avalanche to withdraw the license represented by current tickets upon refund of the price paid for the tickets. Because the Trustee has no greater rights than the Debtor, he cannot sell the renewal rights without the consent of the Colorado Avalanche. If he did so, the purchaser could be denied tickets for the upcoming season. Any order directing sale acts as a withdrawal of the license but requires the Colorado Avalanche to refund the ticket price for unused tickets.

IT IS THEREFORE ORDERED that the Motion is **GRANTED**, **IN PART**, and **DENIED**, **IN PART**, as follows:

- 1. The Debtor shall pay the Trustee the purchase price of all tickets for Colorado Avalanche games which have been played during the 2001 season and shall turn over all tickets for games scheduled for 2002.
- 2. The Trustee is authorized to offer 2002 tickets for sale by internet auction or other means at a price not to exceed the face amount of the ticket, plus tax, advising potential purchasers that the Colorado Avalanche may revoke the tickets, but in such event will refund the price of the tickets paid by the Debtor.
- 3. Absent consent by the Colorado Avalanche to the sale of the Debtor's season renewal rights, the Trustee may not sell same; however, such renewal rights may be relinquished to the Colorado Avalanche in consideration of payment of the purchase price for tickets for games not yet played.

DATED this day of January	y, 2002.
	BY THE COURT:
	Marcia S. Krieger, Chief Judge United States Bankruptcy Court